68th Congress } HOUSE OF REPRESENTATIVES { Report
2d Session } { No. 1566

AMENDING SECTION 1 OF THE INTERSTATE COMMERCE ACT

February 23, 1925.—Ordered to be printed

Mr. Winslow, from the Committee on Interstate and Foreign Commerce, submitted the following

ADVERSE REPORT

[To accompany S. 862]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 862) amending section 1 of the interstate commerce act, having considered the same, report adversely thereon.

[S. 862, Sixty-eighth Congress, first session]

A BILL Amending section 1 of the Interstate Commerce Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (4) of section 1 of the interstate commerce act, as amended, is hereby amended by adding at the end thereof a new sentence to read as follows:

"It shall be unlawful for any such carrier to demand, charge, or collect from any person for transportation, subject to the provisions of this act, in any parlor car or sleeping car, any fare in addition to that demanded, charged, or collected for transportation in a day coach, but this shall not prevent just and reasonable charges for the use of accommodations in parlor cars or sleeping cars by companies owning such cars."

April 2, 1923, to February 9, 1925: Study of surcharge made by Interstate Commerce Commission, which held many and exhaustive hearings, heard oral arguments, considered briefs, etc., and published its report of findings.

Seven commissioners indicated disapproval of the provisions of this bill.

Two of the seven thought that one-half of the surcharge might be removed.

Four of the commission were opposed to the surcharge.

December 10, 1923: Surcharge bill introduced in Senate.

May 20, 1924: Senate committee reported bill favorably without hearings.

May 22, 1924: Senate passed the bill.

June 7, 1924: Congress adjourned.

December 1, 1924: Congress convened.

February 13 (a. m.), 1925: House committee took up surcharge bill.

February 13 (p. m.), 1925: Senate attached surcharge bill as an amendment to independent offices appropriation bill.

February 17, 1925: House committee began consideration in executive session.

February 18, 19, and 20, 1925: House committee held hearings.

February 21, 1925: House committee voted to report the bill out adversely.

The committee bases this adverse report on the following considerations:

1. This bill would initiate direct rate making by Congress, a serious and unwise departure from long-established policy (1887).

2. This precedent would open the doors for every interest dissatisfied with any existing rate to ask Congress to take on the commission's statutory duty as to rate making.

3. The removal of the surcharge would—

(*a*) Reduce service rates for those best able to pay;

(*b*) Result in raising other passenger and freight rates; or

(*c*) Postpone reductions in general passenger rates; or

(*d*) Postpone general reductions in freight rates on agriculture produce (including livestock) and other articles;

(*e*) Interfere with and retard the general survey and adjustment where possible, of freight rates as directed by the Hoch-Smith resolution recently enacted.

FINANCIAL CONSIDERATIONS

(*a*) Testimony (not disputed) showed revenue to railroads from surcharge for 1923 (the last complete yearly accounting available) was about $37,000,000.

(*b*) Assuming that carriers can stand a revenue reduction of $37,000,000 there is no reason why the entire reduction should be made for the benefit of Pullman travelers.

(*c*) If a cut in revenue of $37,000,000 can not fairly be made, and, nevertheless, the removal of the surcharge as such is desirable, other sources of income must be determined. No suggestion was made as to what rates should be increased in lieu of surcharge returns.

(*d*) About $18,000,000 of the $37,000,000 goes to railroads earning a total of less than 5 per cent on their book-value investment.

(*e*) A large part of the $19,089,564 which accrues from surcharge to railroads earning 5 per cent or more goes to carriers which would earn less than 5 per cent if the surcharge were removed.

(*f*) Only $8,627,000 goes to railroads earning over 6 per cent.

(*g*) The earnings of certain important railroads earning less than 5 per cent would be depleted to an embarrassing extent if their surcharge incomes were taken away.

Only 4 persons out of every 100 buying railroad passenger transportation ride in Pullmans, and consequently 4 per cent pay all the surcharge.

No proponents appeared nor requested to be heard at the hearings except those representing organizations of commercial travelers.

Correspondence on file with the committee discloses but few communications from travelers for pleasure, tourists' organizations, associations or organizations fostering agriculture, manufacturing, or labor.

Of this correspondence there are several communications from employers of traveling salesmen in favor of the bill, but there is a far greater representation from such employers who are opposed to the removal of the surcharge.

In view of the all-around seriousness of the proposal to remove the surcharge and the inevitable rate-making complications involved, the real responsibility for proving that the existing rate-making methods and the rates themselves are ill advised is a clear obligation of those favoring the bill. We believe that the proponents have not proven their contention.

The existing surcharge was established by the Interstate Commerce Commission in 1920, concurrently with and as a part of a general rate schedule revision, including advanced passenger and freight rates, for the purpose of insuring necessary operating revenue to the railroads.

All surcharge receipts go to the railroads and none to the Pullman Co.

The bill purports to provide for the removal of the surcharge, but under its provisions it would also prohibit the levying of other railroad transportation charges, though just and reasonable, upon those desiring special accommodations and extra service in a Pullman sleeping or parlor car.

As of December 26, 1924, Mr. Elmore, statistical analyst of the Interstate Commerce Commission, reported on the Pullman surcharge to the commission.

The proponents of this bill referred to this report as proving their contention that a Pullman car could be operated by a railroad less expensively than a coach. This was only a partial finding.

In his conclusions covering all items entering into the cost of such operation Mr. Elmore stated in his report that the cost to the railroad for operating per car-mile on a daily trip of 112 miles for the coach was 44.81 cents and for the Pullman 49.37 cents. On a daily trip of 272 miles for the coach was 36.50 cents and for the Pullman 41.06 cents.

Mr. Elmore further reported in respect of the last figures as follows:

> The figures in these tables indicate that when car-mile costs, which embrace both line haul and terminal expense, are equaled for the same length of haul, the cost per car-mile of the Pullman is approximately 4.56 cents greater than that of the coach.

The foregoing report is approved and concurred in by Samuel E. Winslow, James S. Parker, John G. Cooper, Edward E. Denison, Everett Sanders, Schuyler Merritt, Carl E. Mapes, Walter H. Newton, Homer Hoch, Adam M. Wyant, Olger B. Burtness, John E. Nelson, Sam Rayburn, George Huddleston, Clarence F. Lea, Harry B. Hawes, Robert Crosser, and Parker Corning.

VIEWS OF MR. HUDDLESTON

Every user of a public utility should pay the cost of the service he receives, plus a reasonable return on the investment. No one should be allowed service for less and no one should be charged more. This principle is sustained not only by sound considerations of public policy but by the rules of common morality.

Those who use the Pullman cars demand that the surcharge be abolished on the ground that it is excessive. From my point of view, the sole issue is one of fact. Recently, after an exhaustive investigation, a majority of the Interstate Commerce Commission found in substance that, including the surcharge, Pullman passengers pay proportionately less for the service they receive than the day-coach passengers, and that the railroad company gets less in the way of a net return from the Pullman passenger than from the passenger who rides in the day coach. No evidence has been submitted to our committee which would justify us in a contrary finding of fact.

I feel that practically all railroad rates are too high. Particularly is the passenger basis of 3.66 cents per mile excessive. A reduction in this basic rate would be of equal benefit to Pullman and day-coach passengers. If we are to reduce carriers' charges, we should begin with reductions which would benefit every one alike. In view of the Interstate Commerce Commission's finding of fact against the justice of their position, I decline to yield to the demand of the small well-organized, well-represented, and politically influential group of Pullman-car users for a reduction in rates which would benefit that group alone.

GEORGE HUDDLESTON.

VIEWS OF MR. CROSSER

The undersigned agrees that the bill should not be favorably reported, but does not approve unqualifiedly the language contained in (1) and (2) under the heading: "The committee bases its adverse report on the following considerations."

Whether direct action by Congress is wise or unwise depends largely upon the attitude of the commission and its manner of disposing of the controversy in any particular case. If there is evident bias or prejudice toward one or more of the contending interests in any case or an abuse of discretion by the commission or even if no such facts have been proven, nevertheless, if the commission's decision is palpably unjust, it is not only the right of Congress but its solemn duty to correct such wrong by direct action.

Robert Crosser.

VIEWS OF THE MINORITY

We dissent from the report of the majority of the Committee on Interstate and Foreign Commerce on Senate bill 862, wherein it is returned to the House with an adverse recommendation.

During the first session of the present Congress more than 25 bills were introduced in the House proposing to remove and prohibit the surcharge collected by the railroads from passengers traveling in sleeping and parlor cars. Efforts were made to secure the consideration of these bills by the committee, but without success. In May of last year the Senate passed Senate bill 862, which removed and prohibited this surcharge, and the bill was in due course referred to this committee when it reached the House. Thereupon another effort was made to induce the committee to give consideration to this legislation, in view of the action taken by the Senate. This effort was equally unsuccessful.

Congress adjourned on June 7, and reconvened the first Monday in December. During the present session no action was taken by the committee looking to a consideration of this subject until the 13th of the present month, on which day the Senate, hopeless of any action by the House committee, adopted this legislation as an amendment to the bill making appropriations for the independent offices.

Although the appropriation bill to which this amendment was attached was not before this committee, it prepared with feverish haste to hold hearings on the bill passed by the Senate last May, in the hope, no doubt, that the unfavorable action of the committee, which was a foregone conclusion from the beginning, might influence Members of the House to vote against the Senate amendment to the appropriation bill. Except for the Senate amendment to this appropriation bill, the House would not have been given an opportunity to vote on the proposition at all.

We object to the imposition of this extra charge upon the traveling public and favor its removal.

In the first place, it was never heard of until the war, during the Government operation of the railroads, and was instituted somewhat in the nature of a tax. This surcharge was placed upon travelers in sleeping cars in June, 1918, by order of the Director General of Railroads. It was so obnoxious and objectionable to the public that in the following December it was removed by the director general. It was not resumed until 1920, when the carriers were seeking the authority of the Interstate Commerce Commission to raise rates generally. Although not included in their original request for increases, this relic of the war was asked for before the general increases were decided upon, under circumstances which will be hereafter alluded to, and has been collected regularly from that time until now.

When this surcharge was resumed in 1920, at the time of the general increase in freight and passenger rates throughout the country, the railroads were seeking new sources of revenue. The authority to collect this extra charge against those who travel in sleeping cars was not sought during the early stages of the rate proceedings. But in view of the fact that the Railroad Labor Board issued an order increasing the wages of railroad labor, the roads, after the conclusion of the hearings, but before the commission's decision, asked to be permitted to resume the collection of the surcharge instituted during the war.

It was claimed that the increases in wages granted by the Labor Board amounted to more than $600,000,000 per annum, and the Labor Board estimated its increases at $618,000,000 per annum. Acting upon this increase, as estimated by the board, the commission, in an effort to meet an emergency, authorized the collection of the surcharge. However, it developed, after the surcharge had been put on, that the increases in wages amounted to only $565,000,000, $53,000,000 less than the estimates on which the commission based its permissive action.

During the four years from 1920 to 1924 the operating revenues of the carriers increased something like $181,000,000, while during the same period their gross operating expenses decreased something like $866,000,000.

It will not be denied that the increase in passenger rates referred to was due to the increase in wages granted by the Labor Board. If there had been no decrease in railroad wages, or in other expenses making up the gross expenses of operating the roads, there might be some weight to the contention that the carriers need this revenue to meet the increases still in effect. But since the decision of the Labor Board in 1920, the same board, through its various decisions, has brought about a reduction in railroad labor wages of approximately $575,000,000, or more than the increases granted in 1920 upon which this surcharge and other increased rates were based.

It is claimed by the representatives of the carriers appearing before the committee and before the Interstate Commerce Commission in the proceeding before it, that the carriers are in dire need of this extra charge. While the proof of the exact amount of this charge in the aggregate is unsatisfactory, it is estimated that it amounted for the year 1922, to something like $32,000,000; that for 1923, it amounted to approximately $37,000,000, and it is claimed by the carriers that for 1924, it amounted to $40,000,000; and that they can not be deprived of this amount of money.

It is admitted that a large proportion of this revenue derived from the surcharge is collected by railroads that are earning more than the fair return fixed by the transportation act. It must not be forgotten that most of the important roads receive pay from the Pullman Co. for hauling their cars over the tracks of the railroad companies. That these companies receive from $7,500 to $9,300 per car per annum from the Pullman Co. is likewise not open to serious dispute. It is also true that, with one or two exceptions, the roads that are receiving the bulk of the surcharge revenue are the same roads that are receiving the above amounts from the Pullman Co. for hauling their cars.

It is claimed by those urging this legislation that the amount of money subject to recapture under the terms of the transportation act amounts to more than $80,000,000 per annum, or twice the amount of the surcharge revenue, and that if the whole surcharge were removed it would still leave these carriers subject to the return of more than $40,000,000 per annum, and that therefore they do not need this surcharge revenue. The representatives of the carriers in the hearings before the committee claimed that the amount of the annual recapture would not exceed $40,000,000 per annum, basing their figures on the book value of the roads.

Let us admit, for the sake of argument, that the roads are correct in this estimate and that the amount of excess earnings per annum over the fair return fixed under the transportation act and subject to recapture is $40,000,000. This is more than the aggregate revenue derived from the surcharge, and if it were all taken off the roads in the aggregate would still retain as much net revenue as they receive and retain at present.

We do not contend that every individual road that receives this surcharge revenue is earning more than the standard return fixed under the law. But we do claim, and it can not be disputed, that the larger portion of this surcharge revenue is received by roads that are being paid under contract with the Pullman Co. for hauling their cars, and that a very considerable portion of this surcharge revenue is being received by roads that are earning more than the fair return fixed under the law.

On behalf of the carriers it is claimed that they render an extra service to those who travel in sleeping cars, and that they are entitled to charge for this extra service, which they are doing by the collection of the extra charge.

This claim has not been substantiated to a degree that is satisfactory or impressive. In the first place, the roads do not own the Pullman cars. They do not build them, equip them, operate them, repair them, clean them, nor furnish any service whatever in them. The cars are built by the Pullman Co. This company also completely equips them, cleans them, operates them, furnishes all that is required in them, pays the wages and salaries of those who attend to them and to the passengers in them, and in addition, with few exceptions, pays the railroads for hauling them as a part of their passenger trains throughout the country.

Therefore, the railroads not only make no contribution to the capital investment involved in the construction, maintenance, and operation of these cars, but they also save the expense which would be required in the construction, equipment, and operation of additional cars that would be required if the Pullman cars were not in existence.

When a prospective passenger purchases a railroad ticket to a point of destination, he pays the railroad company for carrying him the distance called for. The charge for that ticket represents the total cost of the act of transportation, plus a reasonable profit for the service. If the passenger is traveling at night, or for other reason desires to take advantage of the service rendered in a Pullman car, he purchases a Pullman ticket, and the price of this ticket represents, not the cost of transportation which he has already paid to the railroad but the cost of the hotel accommodations in the car which the Pullman Co. furnishes and which it is paying the railroad company to haul over its tracks. But by the imposition of this surcharge, after having paid the road for transporting him, and the Pullman Co. for lodging him, he is required to pay the railroad company an extra amount for the privilege of paying the Pullman Co. for the accommodations which it provides. This is nothing short of a penalty upon the requirements of nature.

In addition to the claim that the roads need the money represented by the surcharge, to which we have already referred, it is claimed that those who travel in sleeping cars, those whose natural requirements induce sleep and comfort when traveling at night, are amply able to pay the railroads something extra for the service rendered by the Pullman Co., and that therefore they ought to be made to pay it, and an effort has been made to play upon an imaginary prejudice against all who may be able to or must ride in Pullman cars.

We have not reached the point in this country yet when common carriers shall be permitted by law to charge for their services in accordance with the ability of the passenger to pay. If this is to be the basis of passenger rates, then every man who offers to buy a railroad ticket ought to be required to file with the ticket agent an inventory of his earthly goods and pay for the ticket, not a uniform price measured by distance, but a price represented by the size of his bank account.

But even if the contention of the carriers that those who ride in sleeping cars should pay three fares is sound, it is not true that only the rich or the well-to-do are entitled to these privileges or desire to enjoy them. The poor man, called to a distant point through illness or death, or for any other reason, and is compelled to travel at night, has as much right to the opportunity for sleep and comfort as the opulent. The parent who has worked hard and sacrificed and saved in order that he or she may accompany a son or daughter to some modest institution of learning has as much right to go to bed, if traveling at night, as the man to whom this expense is a trifle. The farmer who wishes to follow his crop to market or to see a little of the world has as much right to stretch his legs on a Pullman mattress as has the captain of a great industry. But because the charge for this comfort is prohibitive, as represented by the payment of three fares, one to the company that furnishes the comforts and two to the road that hauls him, he is compelled to curl his anatomy in a painful posture in the corner of a seat in the day coach and catch a hectic nap between the jerks and lunges of the train.

It is claimed by the carriers that this extra charge is justified because a Pullman car is heavier than an ordinary day coach and that it costs more to haul the heavier car.

It is undoubtedly true that a steel Pullman car is heavier than some day coaches; but with the modern construction of steel coaches which has been in progress on the railroads for a number of years the difference in weight has gradually dwindled until it no longer exists as between Pullman and day coaches of steel construction.

But even if it be true that on the average the Pullman cars are heavier than the average day coach, it has not been shown to our satisfaction that the per mile cost of hauling the sleeping car is greater than for hauling the day coach. There is great confusion in the testimony of the experts as to the actual comparative cost of hauling the different types of cars. But it is not disputed that there is no greater variance between the weight of a Pullman car and a day coach than that which exists between different types of day coaches themselves.

But if it be admitted that it costs slightly more to haul a Pullman than a day coach, we contend that the difference is more than made up by the fact that all the expense connected with a Pullman car is borne by the Pullman Co., except the hauling of it, and that the roads receive annually under their contracts with the Pullman Co. more than $12,000,000 for the services they render that company in the transportation of its cars.

It is claimed that Congress ought not to pass this legislation prohibiting the surcharge, because it will overrule the decision of the Interstate Commerce Commission, bring about congressional rate-making, and open a Pandora's box of trouble for the future.

We seriously question whether this extra charge is in the real sense of the word a "rate." It is more in the nature of a tax, or a penalty. But if this legislation be rate making, Congress set the example for it in the transportation act itself, when, at the insistence and persistent importunities of the carriers, it gave the Interstate Commerce Commission mandatory instructions to raise freight and passenger rates to a point that would bring a return of 6 per cent net to the carriers for a period of two years, with the right of the commission to fix a different rate after the expiration of that period. If this is congressional rate making, that was equally congressional rate making, and in that case the congressional instruction covered the raising of all rates throughout the country, while this bill relates to the removal of an obnoxious and burdensome relic of the war.

The Interstate Commerce Commission itself was hopelessly divided on the question, and can hardly be said to have had a majority opinion, as manifested in its various opinions.

Five of the commissioners decided that the whole surcharge ought to remain. Four decided that it ought to be entirely removed. Two decided that one-half of it ought to be removed. In other words, five commissioners were satisfied with it as it is, six were dissatisfied with it as it is; but because less than a majority of them favored its entire removal, although less than a majority favored its entire retention, the surcharge remains in effect, and will remain in effect until and unless Congress shall pass the legislation now under consideration.

There are many additional reasons which might be urged in behalf of the removal of this surcharge, the discussion of which lack of time forbids.

Efforts have been made to create opposition to its removal by claiming that it will have to be made up somewhere else, and will either result in higher rates elsewhere or prevent the reduction of rates elsewhere.

No one desires to see the railroads seriously crippled in their ability to serve the public, and no one whose opinion is entitled to much consideration desires to see the railroads serve the public for less than a reasonable return upon their investment and their service. But we deny that these just and proper considerations require the imposition of an unjustifiable discrimination such as exists in the surcharge under discussion for which no commensurate service is rendered by anybody. Neither will the removal of this discrimination result in higher rates anywhere else, nor prevent the reduction of rates on commodities that are entitled to such readjustments.

Respectfully submitted.

Alben W. Barkley.
Tillman B. Parks.

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